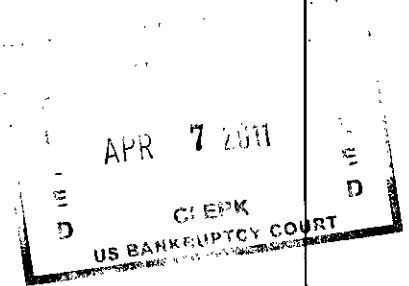


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In propria persona



**IN THE UNITED STATE BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:) Chapter 11
CIRCUIT CITY STORES, INC., et al.,) Case No.: 08-35653-KRH
Debtors.) (Jointly Administered)

**RESPONSE OF FORMER EMPLOYEE/CREDITOR KEITH ALLEN TO
LIQUIDATING TRUST'S ELEVENTH OMNIBUS OBJECTION TO CLAIMS**

Keith Allen, a former employee of Circuit City Stores, Inc. and creditor thereof, hereby submits the following Response to the eleventh omnibus objection ("Objection") to the claims of Circuit City Stores, Inc. Liquidating Trust (the "Trust").

1. Statement of the Facts

The relevant facts are not in dispute. Keith Allen was employed by Circuit City for three years up until March 15, 2009. At the time of the termination of his employment he was a district manager. On March 15, 2009, Circuit City terminated the employment of Mr. Allen along with all of its other district managers.

As stated by the Trust in its Objection, in or about January 2008, Mr. Allen received a letter similar to the exemplar attached as Exhibit "F" to the Objection. Mr. Allen signed and returned the letter indicating his acceptance of the terms therein. By the explicit terms of the

1 letter, Mr. Allen had no right to payment in January 2008 or at any time unless he was employed
2 by Circuit City on the stated vesting date or there occurred a "Change in Control." The letter
3 directed to Mr. Allen provided that if he was employed by Circuit City when a "Change in
4 Control" occurred, then the amount set forth in his letter (\$40,000.00) would become fully
5 payable and he would not have to wait for the vesting dates. A "Change in Control" included the
6 sale of all or substantially all of Circuit City's assets. See Exhibit "F", ¶ 2 to the Trust's
7 Objection. As acknowledged by the Trust, Circuit City had completed its going-out-of-business
8 sales and closed its remaining stores by March 2009. See Objection, ¶ 23. Mr. Allen never
9 received any portion of the promised \$40,000.00 compensation.
10
11

12 **2. Argument**

13 **a. Mr. Allen Earned the Bonus in or about mid-January 2009, Less than 180**
14 **Days Before the Petition Was Filed.**

15 The Trust contends that a meaning other than that provided in the clear and unambiguous
16 terms of the letter agreement (Exhibit "F") should be applied. Although the letter and the facts
17 unequivocally demonstrate that the amounts were earned in January 2009 at the time of the
18 requisite "Change in Control," the Trust argues that the amounts were actually earned in January
19 2008 when the letter was signed and returned by Mr. Allen. Such an interpretation stretches the
20 bounds of reason.
21
22

23 **b. The Cases Cited by the Trust Do Not Apply to the Facts in This Case.**

24 The Trust cites *Grady v. AH Robins Co.*, 839 F.2d 198, 202 (4th Cir. 1988) in support of
25 its argument that Mr. Allen's claim arose at the time he signed the letter. In *Grady*, the court
26 dealt with an alleged tort. The debtor was the manufacturer of the Dalkon Shield. The claimant
27 had had inserted a Dalkon Shield some years before. She filed litigation against the debtor
28 almost two months after the debtor filed its petition for reorganization. Mrs. Grady filed a

1 motion in the bankruptcy court seeking a decision that her claim did not arise before the filing of
2 the petition. The bankruptcy court determined that the claim arose when the acts giving rise to
3 the debtor's liability were performed, not when the harm caused by those acts was manifested.
4
5 Thus, the claim arose when the Dalkon Shield was inserted in the claimant. Nothing more
6 needed to occur. On appeal, the court held "only that the Dalkon Shield claim in the case before
7 us, when the Dalkon Shield was inserted in the claimant prior to the time of filing of the petition,
8 constitutes a 'claim' 'that arose before the commencement of the case' within the meaning of 11
9 U.S.C. Sec. 362(a)(1)." Id. at p. 203.

10
11 The Trust also cites *In re U.S. Airways*, 2007 WL 3231573, *3 (Bankr. E.D. Va. 2007).
12 In that case, U.S. Airways had filed a petition for reorganization under chapter 11 on August 11,
13 2002 and a plan was confirmed on March 18, 2003. The bar date to file claims was November 4,
14 2002. Id. at p. 2. The claimant, Ms. Holcombe, filed neither a proof of claim nor a request for
15 allowance of an administrative expense despite the fact that on October 9, 2002 she had filed a
16 charge of discrimination with the EEOC alleging violations of the Americans with Disabilities
17 Act ("ADA") extending back to December 3, 2001. She received a right-to-sue letter from the
18 EEOC on July 2, 2003 and then filed suit. Id. at p. 3. The court held that "it is clear that the
19 essential events giving rise to Ms. Holcombe's claim occurred prior to confirmation of the plan in
20 the first chapter 11 case." Id. at p. 10. The court determined that "all of the relevant acts
21 underlying Ms. Holcombe's claim occurred prior to the March 18, 2003 confirmation date in the
22 first bankruptcy case. As a result, her claim was discharged in that case and is now barred by the
23 discharge injunction." Id. at p. 10.

24
25
26
27 *Grady* and *U.S. Airways* are distinguishable from the instant case. Neither case had
28 anything to do with the compensation of employees by an employer as in this case. *Grady* dealt
only with whether the automatic stay provision of 11 U.S.C. Sec. 362 applied to the claim of

1 Mrs. Grady. *U.S. Airways* dealt with a tort claim that was clearly untimely. Unlike the tort
2 claims in those cases, the claim here involves employment compensation which is accorded
3 priority status under section 507(a)(4) of the Bankruptcy Code. As acknowledged by the Trust,
4 Section 507(a)(4) accords priority status to "wages, salaries, or commissions ... earned" within
5 180 days before the filing date." Mr. Allen earned \$20,000 by continuing his employment until
6 the first vesting date of January 1, 2009. He earned an additional \$20,000 when the Change in
7 Control occurred in or about mid-January 2009; not at any time sooner. The notion that Mr.
8 Allen earned the funds at the time he signed the letter is contrary to the facts and the law.

9
10
11 **c. The Interpretation Sought by the Trust Would Set Bad Precedent.**

12 The bonuses promised by Circuit City to its employees were for the purpose of inducing
13 employees to remain employed at Circuit City and forego other job opportunities. Although
14 other companies paid higher salaries than Circuit City, the promised bonuses certainly induced
15 employees to stay employed with Circuit City.

16
17 If the interpretation requested by the Trust were to be applied, Circuit City's former
18 employees will have been severely abused. While Mr. Allen did not know the status of all of
19 Circuit City's accounting books and records in early 2008, if employers can enter into
20 agreements such as those entered into here, the possibility of fraud and significant injury being
21 committed on their employees is likely. An employer could enter into agreements with
22 employees knowing that the business is close to insolvency. The financial status of the company
23 would typically be unknown to the employees who might forego regular wages in exchange for a
24 greater bonus at a later time. If the employer can then go 181 days before filing its bankruptcy
25 petition, each of the employees would have only a general, unsecured claim. Employees should
26 not lose section 507(a)(4) priority through cunning and gamesmanship.
27
28

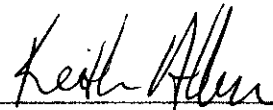
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1 **3. Conclusion**

2 For the foregoing reasons, the Trust's Objection seeking to convert Mr. Allen's priority
3 claim to a general unsecured claim should be denied.
4

5 **SUBMITTED** this 6th day of April, 2011.

6
7 By



8 Keith Allen
9 489 Mill Wood Blvd
10 Marysville, OH 43040
11 Claimant In Pro Se

12 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
13 UNITED STATES THAT THE STATEMENTS SET FORTH IN THE ABOVE RESPONSE
14 ARE TRUE AND CORRECT AND BASED ON MY FIRST-HAND KNOWLEDGE.



15 Keith Allen
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1
2 **ORIGINAL** of the foregoing was sent via
3 priority overnight mail on this
4 6th day of April, 2011, to:

5 Clerk of the Bankruptcy Court
6 United States Bankruptcy Court
7 701 East Broad Street – Room 4000
8 Richmond, Virginia 23219

9 And a **COPY** of the foregoing was sent via
10 priority overnight mail and via facsimile
11 on this 6th day of April, 2011, to:

12 Jeffrey N. Pomerantz, Esq.
13 Andrew W. Caine, Esq.
14 PACHULSKI STANG ZIEHL & JONES LLP
15 10100 Santa Monica Boulevard
16 Los Angeles, California 90067-4100
17 Tel.: (310) 277-6910
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20 Paula S. Beran, Esq.
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April 6, 2011

VIA OVERNIGHT MAIL

Clerk of the Bankruptcy Court
United States Bankruptcy Court
701 East Broad Street – Room 4000
Richmond, Virginia 23219

Re: In re: Circuit City Stores, Inc., et al.,
U.S. Bankruptcy Court, E.D. Va., Richmond Division
Case No.: 08-35653-KRH

Dear Clerk of the Court:

Please find enclosed the original of my **Response of Former Employee/Creditor Keith Allen to Liquidating Trust's Eleventh Omnibus Objection to Claims**, a face sheet and a self-addressed stamped return envelope. Please file the original and conform the face sheet and return it to me in the self-addressed stamped envelope. Should you have any questions, please contact me.

Sincerely,

Keith Allen

Keith Allen

CC: Jeffrey N. Pomerantz, Esq.
Andrew W. Caine, Esq.
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